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Michael Wayne Brown

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EXAMINER

FITZPATRICK, ATIBA O

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/732,780	<b>Applicant(s)</b> BROWN ET AL.	
	<b>Examiner</b> Atiba O. Fitzpatrick	<b>Art Unit</b> 4192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/05/2004, 12/10/2003</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it contains the application title on the same page. Correction is required. See MPEP § 608.01(b).

### ***Double Patenting***

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).
3. A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.
4. Claims 1, 2, 3, 5, 8, 9, 10, 12, 15, 16, 17, 19, 22, 23, 24, and 26 of this application conflict with claims 1, 6, 7, 8, 9, 14, 15, 16, 17, 22, 23, 24, 25, and 30 of Application No. 20050131697. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

5. As per claim 1, USPGPubN 20050131697 teaches a method of automatically identifying participants at a conference who exhibit a particular expression during a speech comprising the steps of:

indicating the particular expression (USPGPubN 20050131697: claim 1, line 9); recording the participants, the recording including both audio and video signals (USPGPubN 20050131697: claim 1, line 5); determining, using the recording of the participants in conjunction with an automated facial decoding system, whether at least one participant exhibits the particular expression; and identifying the at least one participant who exhibits the particular expression (USPGPubN 20050131697: claim 1, line 12).

6. As per claim 2, USPGPubN 20050131697 teaches the method of Claim 1 wherein the video and audio signals representing the at least one participant are passed through a regional/cultural filter before the at least one participant is identified (USPGPubN 20050131697: claim 6, line 9).

7. As per claim 3, USPGPubN 20050131697 teaches the method of Claim 2 wherein the video and audio signals representing the at least one participant are further passed through an individual filter before the at least one participant is identified (USPGPubN 20050131697: claim 7, line 15).

8. As per claim 5, USPGPubN 20050131697 teaches the method of Claim 4 wherein the audio and video data identifying the at least one participant is stored for future use (USPGPubN 20050131697: claim 1, line 5).

9. As per claim 9, arguments made for rejecting claim 9 are analogous to arguments made for rejecting claim 2.

10. As per claim 10, arguments made for rejecting claim 10 are analogous to arguments made for rejecting claim 3.

11. As per claim 12, arguments made for rejecting claim 12 are analogous to arguments made for rejecting claim 5.

12. As per claim 15, arguments made for rejecting claim 15 are analogous to arguments made for rejecting claim 1.

13. As per claim 16, arguments made for rejecting claim 16 are analogous to arguments made for rejecting claim 2.

14. As per claim 17, arguments made for rejecting claim 17 are analogous to arguments made for rejecting claim 3.

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15. As per claim 19, arguments made for rejecting claim 19 are analogous to arguments made for rejecting claim 5.

16. As per claim 22, arguments made for rejecting claim 22 are analogous to arguments made for rejecting claim 1.

17. As per claim 23, arguments made for rejecting claim 23 are analogous to arguments made for rejecting claim 2.

18. As per claim 24, arguments made for rejecting claim 24 are analogous to arguments made for rejecting claim 3.

19. As per claim 26, arguments made for rejecting claim 26 are analogous to arguments made for rejecting claim 5.

20. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

21. Claims 4, 11, 18, and 25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 20050131697 in view of USPN 6585521 (Obrador).

22. As per claim 4, USPGPubN 20050131697 teaches the method of Claim 3 wherein the participants are recorded and the video and data signals are video data (USPGPubN 20050131697: claim 1, line 5). USPGPubN 20050131697 does not teach digitally recorded.

23. Obrador teaches digitally recorded (Obrador: Fig. 1a: 140; abstract: "The method and apparatus use a system, such as an emotion detection system that includes one or more multimedia acquisition devices, such as video cameras, to detect viewers' behavior and emotion feedback, and to produce as video indices various categories of behavior and emotion segments. Each video camera may include one or more image sensors and/or audio sensors").

24. Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the teachings of Obrador into USPGPubN 20050131697 since USPGPubN 20050131697 suggests a speech improvement apparatus in general and Obrador suggests the beneficial use of digital recording for video indexing as to be able to use and manipulate the digital data on a common computer in the analogous art of video and speech processing.

25. As per claim 11, arguments made for rejecting claim 11 are analogous to arguments made for rejecting claim 4.

26. As per claim 18, arguments made for rejecting claim 18 are analogous to arguments made for rejecting claim 4.

27. As per claim 25, arguments made for rejecting claim 25 are analogous to arguments made for rejecting claim 4.

### ***Claim Rejections - 35 USC § 102***

28. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States



only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

29. Claims 1, 8, 15, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6585521 (Obrador).

30. As per claim 1, Obrador teaches a method of automatically identifying participants at a conference (Obrador: col, 1 line 43: "monitoring one or more viewers") who exhibit a particular expression during a speech comprising the steps of: indicating the particular expression (Obrador: Fig. 4a: 430, 440; Figs. 4-6; Fig. 7: 760); recording the participants, the recording including both audio and video signals (Obrador: abstract: "The method and apparatus use a system, such as an emotion detection system that includes one or more multimedia acquisition devices, such as video cameras, to detect viewers' behavior and emotion feedback, and to produce as video indices various categories of behavior and emotion segments. Each video camera may include one or more image sensors and/or audio sensors"); determining, using the recording of the participants in conjunction with an automated facial decoding system, whether at least one participant exhibits the particular expression (Obrador: Fig. 7: 720 and 730); and identifying the at least one participant who exhibits the particular expression (Obrador: col 2, line 27: "The viewers or other users, i.e., user, may later selectively view the multimedia sequence by browsing through the video indices of various categories of emotion. The video indices are similar to chapters within digital video disc

(DVD) movies that enable a user to jump directly to a particular chapter without having to fast forward. The method and apparatus for video indexing is transparent to the user, and may generate custom indexing to a particular user, affording a user-friendly hierarchy for video browsing”).

31. As per claim 8, arguments for rejecting claim 8 are analogous to those for rejecting claim 1. Obrador teaches that “one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer program products or computer-readable media” (col 5, line 15).

32. As per claim 15, arguments for rejecting claim 15 are analogous to arguments made for rejecting claim 1. With the "means for" language being used for this claim, 112 (6) is being invoked and the structure is determined to be a icon/button for indicating the expression, a processor for performing the computation, a memory device for storing data, and a video camera for performing the recording.

33. As per claim 22, arguments for rejecting claim 22 are analogous to arguments made for rejecting claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

34. Claims 2, 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, 19, 23, 24, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6585521 (Obrador) applied to claim 1 above further in view of USPN 6816836 (Basu).

35. As per claim 2, Obrador teaches the method of Claim 1. Obrador does not teach the video and audio signals representing the at least one participant are passed through a regional/cultural filter before the at least one participant is identified.

36. Basu teaches the video and audio signals representing the at least one participant are passed through a regional/cultural filter before the at least one participant is identified (Basu: col 8, line 20: "Another way is to use filters and other simple transformations on the original image or the face region").

37. Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the teachings of Basu into Obrador since Obrador suggests a speech video indexing based on user emotional feedback in general and Basu suggests the beneficial use of region filtering for audio-visual speech detection as to filter out selective regions of the face in the analogous art of speech and video

processing.

38. As per claim 3, Obrador teaches the method of Claim 2. Obrador does not teach the video and audio signals representing the at least one participant are further passed through an individual filter before the at least one participant is identified.

39. Basu teaches the video and audio signals representing the at least one participant are further passed through an individual filter before the at least one participant is identified (Basu: col 7, line 64: “we remove candidates that do not have sufficient frontal characteristics, e.g., a number of well detected facial features and distances between these features”: this is an individual filter because each individual head shot is assess differently based on its particular characteristics).

40. The rationale used to combine the references for claim 2 is used as the rationale for claim 3.

41. As per claim 4, Obrador teaches the method of Claim 3 wherein the participants are digitally recorded and the video and data signals are video data (Obrador: Fig. 1a: 140; abstract: “The method and apparatus use a system, such as an emotion detection system that includes one or more multimedia acquisition devices, such as video cameras, to detect viewers' behavior and emotion feedback, and to produce as video indices various categories of behavior and emotion segments. Each video camera may

include one or more image sensors and/or audio sensors”).

42. As per claim 5, Obrador teaches the method of Claim 4 wherein the audio and video data identifying the at least one participant is stored for future use Obrador: Fig. 1a: 150).

43. As per claim 9, the arguments for rejecting claim 9 are analogous to arguments made for rejecting claim 2. Obrador teaches that “one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer program products or computer-readable media” (col 5, line 15).

44. As per claim 10, the arguments for rejecting claim 10 are analogous to arguments made for rejecting claim 3. Obrador teaches that “one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer program products or computer-readable media” (col 5, line 15).

45. As per claim 11, the arguments for rejecting claim 11 are analogous to arguments made for rejecting claim 4. Obrador teaches that “one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer program products or computer-readable media” (col 5, line 15).

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46. As per claim 12, the arguments for rejecting claim 12 are analogous to arguments made for rejecting claim 5. Obrador teaches that "one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer program products or computer-readable media" (col 5, line 15).

47. As per claim 16, arguments for rejecting claim 16 are analogous to arguments for rejecting claim 2. With the "means for" language being used for this claim, 112 (6) is being invoked and the structure is determined to be a icon/button for indicating the expression, a processor for performing the computation, a memory device for storing data, and a video camera for performing the recording.

48. As per claim 17, arguments for rejecting claim 17 are analogous to arguments for rejecting claim 3. With the "means for" language being used for this claim, 112 (6) is being invoked and the structure is determined to be a icon/button for indicating the expression, a processor for performing the computation, a memory device for storing data, and a video camera for performing the recording.

49. As per claim 18, arguments for rejecting claim 18 are analogous to arguments for rejecting claim 4. With the "means for" language being used for this claim, 112 (6) is being invoked and the structure is determined to be a icon/button for indicating the expression, a processor for performing the computation, a memory device for storing data, and a video camera for performing the recording.

50. As per claim 19, arguments for rejecting claim 19 are analogous to arguments for rejecting claim 5. With the "means for" language being used for this claim, 112 (6) is being invoked and the structure is determined to be a icon/button for indicating the expression, a processor for performing the computation, a memory device for storing data, and a video camera for performing the recording.

51. As per claim 23, arguments for rejecting claim 23 are analogous to arguments for rejecting claim 2.

52. As per claim 24, arguments for rejecting claim 24 are analogous to arguments for rejecting claim 3.

53. As per claim 25, arguments for rejecting claim 25 are analogous to arguments for rejecting claim 4.

54. As per claim 26, arguments for rejecting claim 26 are analogous to arguments for rejecting claim 5.

55. Claims 6, 7, 13, 14, 20, 21, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6585521 (Obrador) in view of USPN 6816836 (Basu)

applied to claim 5 above further in view of USPN 7117157 (Taylor).

56. As per claim 6, Obrador in view of Basu teaches the method of Claim 5. Obrador in view of Basu does not teach the identifying step includes the step of displaying an image as well as name and location of the at least one individual.

57. Taylor teaches the identifying step includes the step of displaying an image as well as name and location of the at least one individual (Taylor: Fig. 4: 80; abstract: "Image data from cameras showing movement of a number of people, and sound data, is archived and processed to determine the position and orientation of each person's head and to determine at whom each person is looking").

58. Thus, it would have been obvious for one of ordinary skill in the art at the time the invention was made to implement the teachings of Taylor into Obrador since Obrador suggests a speech video indexing based on user emotional feedback in general and Taylor suggests the beneficial use of displaying the participants exhibiting an expression (directional glance) as to determining which person in a group is speaking in the analogous art of speech and video processing.

59. As per claim 7, Obrador in view of Basu teaches the method of Claim 5. Obrador in view of Basu does not teach the identifying step includes the step of identifying the at



least one individual textually.

60. Taylor teaches the identifying step includes the step of identifying the at least one individual textually (Taylor: Fig. 4: 80).

61. The rationale used to combine the references for claim 6 is used as the rationale for claim 7.

62. As per claim 13, arguments for rejecting claim 13 are analogous to arguments for rejecting claim 6. Obrador teaches that “one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer program products or computer-readable media” (col 5, line 15).

63. As per claim 14, arguments for rejecting claim 14 are analogous to arguments for rejecting claim 7. Obrador teaches that “one skilled in the art will appreciate that these aspects can also be stored on or read from other types of computer program products or computer-readable media” (col 5, line 15).

64. As per claim 20, arguments for rejecting claim 20 are analogous to arguments for rejecting claim 6.

65. As per claim 21, arguments for rejecting claim 21 are analogous to arguments for rejecting claim 7.

66. As per claim 27, arguments for rejecting claim 27 are analogous to arguments for rejecting claim 6.

67. As per claim 28, arguments for rejecting claim 28 are analogous to arguments for rejecting claim 7.

### ***Conclusion***

68. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Atiba Fitzpatrick whose telephone number is (571) 270-5255. The examiner can normally be reached on M-F 7:30am-5pm (alternate Fridays off).

69. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pankaj Kumar can be reached on (571) 272-3011. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

70. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Atiba Fitzpatrick

Patent Examiner

/Pankaj Kumar/  
Supervisory Patent Examiner, Art Unit 4192